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El Salvador: One year into state of emergency, authorities are systematically committing human rights violations

Salvadoran authorities have systematically committed grave human rights violations since a state of emergency and numerous legislative amendments were approved in March 2022, supposedly to tackle gangs, said Amnesty International today.

This policy has resulted in more than 66,000 detentions, most of them arbitrary; ill-treatment and torture; flagrant violations of due process; enforced disappearances; and the deaths in state custody of at least **132 people** who at the time of their deaths had not been found guilty of any crime. Key to the commission of these human rights violations has been the coordination and collusion of the three branches of government; the putting in place of a legal framework contrary to international human rights standards, specifically with regard to criminal proceedings; and the failure to adopt measures to prevent systematic human rights violations under a state of emergency.

“The international community is alert to the grave human rights consequences of the state of emergency in El Salvador. The compliance of the institutions responsible for ensuring and administering justice in the country has led to the criminal justice system being weaponized to punish people, the majority of whom are from historically marginalized areas, when there is no evidence that they have committed a crime,” said Erika Guevara-Rosas, Americas director at Amnesty International.

“The deaths of 132 people in state custody, arbitrary detention, mass criminal prosecutions and the indiscriminate imprisonment of tens of thousands of people are incompatible with an effective, fair and lasting public security strategy. The systematic violation of human rights and the dismantling of the rule of law are not the answer to the problems facing the country. On the contrary, they set very dangerous precedents.”

The state of emergency was decreed on 27 March 2022 after a spike in homicides in which 87 people died, the result of the breakdown of a supposed pact between Nayib Bukele’s government and criminal structures to reduce the number of homicides in exchange for certain benefits for gang leaders.

Amnesty International believes the grave human rights violations being committed under the state of emergency are systematic in nature due to the widespread and sustained manner in which they are occurring; the level of state organization and planning involving the convergence of the three branches of the state; the impunity and lack of accountability; the lack of transparency and access to information; and the widespread criminalization of poverty, as an aspect of discrimination.

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Erika Guevara-Rosas, Americas Director, Amnesty International

The systematic nature of human rights violations could lead Salvadoran state officials to bear individual international criminal responsibility for failing to comply with their obligations to prevent and punish such acts

Criminal prosecution and indiscriminate imprisonment

For more than a year, procedural safeguards, such as the presumption of innocence and the right to a defence, have been suspended, which has allowed the arbitrary detention and imprisonment of more than **66,000 people** in record time. Amnesty International has documented around 50 cases in which it has been able to identify a pattern of large-scale arbitrary detention and imprisonment.

Patterns identified include detention based on alleged anonymous accusations or having tattoos or a previous criminal record of any kind. The organization has also documented the holding of expedited hearings – mostly virtual – where a judge, whose identity is withheld, can simultaneously try up to 500 people with virtually no evidence implicating them in the commission of an offence. In addition, people lack an effective defence and are barely aware of the prosecution's charges.

Torture and arbitrary deaths in state custody

As of the end of March 2023, the number of people who had died in state custody had risen to 132. However, Salvadoran human rights organizations **believe that there is under-reporting** because of reported cases of exhumations of victims from mass graves after families were finally able to learn of the deaths of individuals who had died months earlier.

Amnesty International has documented at least 10 cases of deaths in state custody and verified that the main causes include torture and cruel and degrading treatment by police officers and guards, as well as lack of access to health services. Some people released on probation reported witnessing guards and police beating prisoners to death, when seeking to extract a “confession” that they were part of a gang structure or when inflicting a supposed punishment.

The organization found that, in some cases, the Forensic Medicine Institute and hospitals where the victims were treated prior to their deaths issued certificates giving the main causes of death as factors such as: “mechanical asphyxiation”, “multiple unidentified traumas” and “beatings”. To date, none of the relatives of those who died have been notified of any investigation to clarify the circumstances of the deaths of their relatives.

Amnesty International documented the case of the enforced disappearance and deprivation of life of a 45-year-old mentally disabled man who was apprehended at his home in mid-April 2022. His family said that between April and June of last year, they delivered to the prison the hygiene kit and food that the prison authorities request for detainees. In July,

prison officials informed them that their relative was no longer held in those facilities but gave no details of his whereabouts. During the next two and a half months, the family visited various prisons and hospitals trying to locate him, requesting the support of the Office of the Human Rights Ombudsperson and the Office of the Attorney General of the Republic, who refused to provide assistance.

In mid-September, they received a phone call from an individual who told them he had shared a cell with their relative. He advised them to go to the Forensic Medicine Institute because he believed that their relative had died as a result of beatings by guards when he entered the prison.

“He told us: ‘Your relative vomited blood through his mouth and nose. I think he died, because they took him to the hospital and they never brought him back,’” the family said.

Through the Forensic Medicine Institute, the family was able to confirm that their relative had died 36 days after he was apprehended and that in early July he had been buried in a mass grave. In mid-October they managed to have his remains exhumed. To date, no state official has contacted the family to inform them of an investigation into his death.

“We see with alarm how overcrowding and torture continue to claim the lives of innocent people, with the complicity of all the institutions that are supposed to uphold their rights. The dehumanization that thousands of unjustly imprisoned people are suffering is intolerable and must be urgently addressed by international human rights protection mechanisms,” said Erika Guevara-Rosas.

Cruel and inhuman treatment – prison overcrowding

Among the package of legal reforms that accompanied the imposition of the state of emergency, one of the most notable is the amendment to the Criminal Code and Criminal Procedure Code allowing the indiscriminate use of pretrial detention by those responsible for the administration of justice. This has resulted not only in a violation of the right to freedom (since this type of detention should be used in very limited circumstances) and the right to be tried or released within a reasonable time, but has also caused a serious overcrowding problem in prisons. Currently, El Salvador has a prison population of more than 100,000, making it **the country with the highest incarceration rate in the world**, with more than 1.5% of its population in prison.

People arbitrarily detained and released after being held in pretrial detention for several months whom Amnesty International was able to interview described the humanitarian

crisis to which the prison population is subjected. Conditions include extreme overcrowding in cells holding more than 100 people, as well as the lack of sanitation and access to basic services such as water, adequate food, medicines and medical care. They said these conditions facilitated people contracting and spreading diseases and, at their most extreme, resulted in deaths from lack of timely medical care.

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The family of a detainee

In addition, they reported being subjected to verbal and physical abuse by the police and prison guards; being prevented from all communication with their families; the use of pepper spray inside cells; the rationing of food and water and access to toilets and showers; and denial of access to the open air.

State organization and planning

The policy of mass incarceration is a product of state planning where the three arms of the state converge, each exercising a key function within the state machinery and making possible the systematic, massive and sustained violation of the human rights of the Salvadoran population.

On the one hand, the Executive, through the police, the armed forces and the Ministry of Security, has designed and implemented a security strategy based on the excessive use of force, indiscriminate arbitrary detention and the practice of cruel, inhuman and degrading treatment including torture.

For its part, the Legislature has for a year continued to approve and extend the period that the state of emergency, a measure whose nature is temporary and extraordinary, remains in force. In addition, it has supported a series of legal amendments that contravene international human rights standards ratified by the country.

Finally, the Judiciary is not acting independently, is violating the right to due process and is failing to combat impunity for the violations committed. The courts and auxiliary entities as well as those attached to the Public Prosecutor's Office are flagrantly failing in their duties in criminal proceedings.

Rampant impunity

The negligence and wilful misconduct of the institutions responsible for ensuring respect for and guarantees of human rights and for prosecuting and punishing crimes committed by officials has led to a high level of impunity for the human rights violations that security officials and those responsible for the administration of justice are committing by their actions or omissions under the state of emergency.

The withholding of information and obstacles to accessing it and the failure to take measures to clarify human rights violations and the circumstances in which they occurred, and to identify those responsible, create the conditions that allow impunity to prevail and facilitate the perpetuation and escalation of these patterns of abuse.

"In none of the 50 cases we have documented has it been possible to verify that there were investigation processes regarding the conduct of public officials. The fact that there are widespread human rights violations and virtually no ongoing criminal proceedings evidences the control exercised from the highest level so that all state powers obey this policy of indiscriminate imprisonment," said Erika Guevara-Rosas.

Criminalization of people living in poverty and collateral impact

The state of emergency includes security measures that have a disproportionate impact on people living in poverty. These de facto measures criminalize people living in the most impoverished areas who have historically suffered the scourge of gangs.

Thousands of families have been seriously affected economically because the main breadwinner has been apprehended and because of the additional expenses they have to incur to try to prove their relatives' innocence, to exercise the right of defence during criminal proceedings and to try to guarantee the well-being and health of their relatives held in prisons.

Civil society organizations have **reported** an increased incidence in affected families of child labour and of minors dropping out of school; increased forced displacement; an increase in cases of family fragmentation; and an increased care burden on women.

Amnesty International again urges President Bukele’s government and other state authorities to take the necessary steps to withdraw the state of emergency; re-establish suspended rights; initiate effective, autonomous and independent investigations into the dramatic consequences of this measure; and ensure reparation measures for victims.

“Given the systematic nature of grave human rights violations, we call on international protection mechanisms to intervene urgently to avoid a major crisis in El Salvador. The Salvadoran state must know with certainty that the international community will not tolerate these kinds of policies,” said Erika Guevara-Rosas.

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